

TANNING FACILITIES

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House Bill 4146 (Substitute H-1)
Sponsor: Rep. Frank Accavitti, Jr.
Committee: Commerce

Complete to 5-8-08

A PRELIMINARY SUMMARY OF HOUSE BILL 4146 (H-1) AS REPORTED FROM COMMITTEE

The bill would create a new Part 134 in the Public Health Code (MCL 333.13401 et al.) to authorize the regulation of tanning facilities. The effective date is October 1, 2008. Among other things, the bill would:

- Allow the Department of Community Health to promulgate rules establishing a voluntary registration system and safety standards for tanning facilities. An entity could not use the term "registered tanning facility" unless registered. However, a tanning facility that chose not to be registered could still operate if it met standards being placed in the Public Health Code under the bill.
- If a registration system is in place, then require the inspection of tanning facilities by local health departments before they could be registered and require the annual inspection of registered facilities. The new state rules could provide for a registration cycle of up to three years, a per-year registration fee of up to \$50 per year, and a one-time application fee of up to \$100. Also local health departments authorized to enforce Part 134 could fix and require the payment of fees by applicants and registrants for services the local units are required to perform.
- DCH would authorize local health departments to enforce tanning facility regulations under the new Part 134. Enforcement functions could be carried out through an intergovernmental agreement where a city or county health department was unable or unwilling to carry out the functions. Local health departments could adopt and enforce local codes, ordinances, and regulations more stringent than the minimum regulations set out in the Public Health Code, and the new state regulations would not relieve an applicant for registration or a registrant from securing local permits or complying with applicable local codes, regulations, and ordinances.
- Require that an individual be provided a written cautionary statement before being allowed to use a tanning device in a tanning facility.
- Specify that a tanning facility would have to require the customer to sign a written statement acknowledging that he or she had read and understood the written warning and had agreed to wear protective eyewear. If the customer was less than 18 years

old, a parent or legal guardian would also have to sign the statement while physically present at the facility and in the presence of the owner or operator. (An existing similar provision in the health code regarding parental consent would be repealed.)

- Require the owner or operator of a tanning facility to conspicuously display a poster on the dangers of ultraviolet radiation; on the need to wear protective eyewear; on the ability of a customer to report any injury to the owner or operator, to the Department of Community Health, or to both; and on other matters.
- Allow an individual injured while using a tanning device at a tanning facility to report that fact to the owner or operator or to the Department of Community Health, or both, and require the facility owner or operator to report to the department any customer reports of alleged injury within five working days of receiving the notice of the alleged injury.
- Make a violation of the act a state civil infraction, with civil fines of up to \$500 per violation, and allow civil actions for injunctive relief.

Following is a more detailed description of some provisions in the bill.

Written warning statement. Before allowing an individual to use a tanning device in a tanning facility, the owner or operator or an employee would have to provide the customer with a written statement containing all of the following information: 1) not wearing eye protection while using a tanning device may cause damage to the eyes; 2) overexposure to ultraviolet radiation produced by the tanning devices causes burns; 3) repeated exposure to the ultraviolet radiation produced by the tanning devices used in the tanning facility may cause premature aging of the skin or skin cancer, or both; 4) abnormal skin sensitivity to ultraviolet radiation or burning may be caused by certain foods, cosmetics, and medication, including tranquilizers, diuretics, antibiotics, high blood pressure medication, and birth control medication; 5) an individual who is taking a prescription drug or over-the-counter drug should consult a physician before using a tanning device; and 6) an individual injured while using a tanning device at a tanning facility may report the injury to the owner or operator of the facility or to the Department of Community Health, or both.

Written consent by customer. Before allowing a customer to use a tanning device, the owner or operator of a tanning facility would have to require a customer to sign a written statement acknowledging that he or she had read and understood the written statement described in the paragraph above and that he or she agreed to use protective eyewear. The facility owner or operator would have to require the customer to sign the statement at least once in a one-year period; to retain the written statement for at least one year; and make the written statement available for inspection upon the request of law enforcement. If the customer was less than 18 years old, the written statement would also have to be signed by a parent or legal guardian while physically present at the facility and in the presence of the owner or operator.

Warning Poster. A tanning facility's owner or operator would also be required to conspicuously display a poster in an area frequented by customers. The poster would have to be printed in at least 32-point boldfaced type and in a form prescribed by the bill. It would carry the heading "Danger: Ultraviolet Radiation," and would contain the following seven items. 1) Follow instructions. 2) Avoid too frequent or too lengthy exposure. As with natural sunlight, exposure can cause eye and skin injury and allergic reactions. Repeated exposure may cause chronic sun damage, characterized by wrinkling, dryness, fragility, and bruising of the skin, and skin cancer. 3) Wear protective eyewear. "Failure to use protective eyewear may result in severe burns and long-term injury to the eyes.") 4) Ultraviolet radiation from sunlamps will intensify the effects of the sun. Therefore, do not sunbathe before or after exposure to ultraviolet radiation. 5) Some oral or skin medications or cosmetics may increase your sensitivity to ultraviolet radiation. Consult your physician before using a tanning device if you are using medications, have a history of skin problems, or believe you are especially sensitive to sunlight. Pregnant women or women on birth control pills who use this tanning device may develop discolored skin. 6) If you do not tan in the sun, you are unlikely to tan from use of this tanning device. 7) If you are injured while using a tanning device at this tanning facility, you may report the injury to the owner or operator or to the Department of Community Health, or both.

Prohibited Claims. The bill would prohibit the owner, operator, or employee of a tanning facility from claiming or from distributing promotional material claiming or otherwise advertising that using a tanning facility is safe, nonburning, or free from risk. The bill also would specify that complying with the warning statement and warning poster requirements would not diminish or otherwise limit or alter the tort liability of the owner or operator of the facility.

Injury Reports. An individual injured while using a tanning device at a tanning facility could report that fact to the facility's owner or operator or to the Department of Community Health, or to both. An individual reporting an injury to the department would have to use a department-provided form. A facility owner or operator would have five working days after receiving a notice of injury to report the alleged injury to the department on a department-provided form. The department would have to develop and make available a reporting form within 30 days after the bill's effective date. The form would have to contain the name of the person making the report, the name of the facility, the nature of the alleged injury, the name and address of the health care provider to whom the injured person was referred, in any, and any information required by the department.

Enforcement. A violation of the new Part 134 would be a state civil infraction and would be subject to a civil fine of up to \$500 per violation. State civil infraction proceedings would be conducted under Chapter 88 of the Revised Judicature Act. Fines and costs would be disbursed as provided in that chapter. In addition to other enforcement action authorized by law, a person alleging a violation of Part 134 could bring a civil action for injunctive relief if the person had used the tanning facility within 60 days before filing the action. The remedies in the bill would be independent and cumulative. The use of one remedy by a person would not bar the use of other lawful remedies by that person or the use of a lawful remedy by another person. The new Part 134 could be enforced by a local health department.

Repealer/Historical Note. The bill would repeal Section 13407 as of October 1, 2008. As mentioned earlier, that section currently requires parental consent for an individual less than 18 years of age to use a tanning device and requires that a parent accompany a minor under 14 years of age. This section was placed in the Public Health Code in 1996 by a bill that was tie-barred to a tanning facility licensing bill similar to House Bill 5144. The 1996 licensing bill was vetoed by then-Governor Engler. Subsequent legislation broke the tie-bar to allow Section 13407 to take effect, although it continued to contain references to non-existent sections of the code that the vetoed legislation would have put in place.

FISCAL IMPACT:

Community Health Department. House Bill 4146 (H-1) will have state fiscal implications for the Department of Community Health. Costs to the department will include establishing a permanent system and staff for the registration process, a registry of injuries reported by individuals and facility owner/operators, and initial promulgation of rules. Estimated first year costs may be \$100,000-\$200,000 and annual costs thereafter approximately \$70,000-\$100,000 and one FTE position, unless participation is very low.

Application and registration fee revenue will support the registration program, although it may be insufficient to cover costs if registration is very low. The bill establishes a maximum application fee of \$100 and maximum annual registration fee of \$50. Preliminary information suggests there are currently about 1,300 businesses in Michigan offering tanning salon services to which this bill may apply. Projected revenue is from \$0 - \$195,000 in the first year and annually thereafter from \$0 - \$65,000, dependent upon participation.

There is also potential in the case of violations for costs and revenue from administrative fines assessed by the Department.

Local Health Departments. Local health departments may incur costs for initial and annual inspections of tanning facilities that choose to apply for and retain registration. Local health departments will also have enforcement authority. Local health departments have the authority to charge fees to the tanning facility for the cost of these services.

Judiciary and Local Units. House Bill 4146 would have an indeterminate fiscal impact on the judiciary and local units of government. The bill's provisions may increase funding for county public libraries, increase revenue to the Justice System Fund, and generate additional revenue for the governmental unit that funds the local courts.

Under current law, state civil infraction violations may be assessed the following: a civil fine, a \$10 Justice System Fund (JSF) assessment, and court costs. The amount for a civil fine for a state civil infraction is determined by the local trial court and shall be paid to the county treasurer for the exclusive support of public libraries and county law libraries (MCL 600.8831). A violation under this bill would be assessed a fine of up to \$500 for each violation.

The defendant would also be ordered to pay a \$10 JSF assessment for each violation, which would be deposited into the state Justice System Fund (JSF). The JSF supports various justice-related endeavors in the judicial branch, the Department of State Police, and the Department of Corrections.

The assessed court costs would generate additional revenue for the governmental unit that funds the local court. Under current law, court costs assessed for state civil infractions may also include direct and indirect expenses for the plaintiff and costs of up to \$500 may be ordered (MCL 600.8827).

House Bill 4146 provides that a person alleging a violation may bring a civil action as well. Any fiscal impact on the judiciary because of increased caseload would depend on the number and complexity of civil lawsuits that might be brought under the bill.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.